IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 807 of 2005.

Reserved on: 30.4.2007.

Decided on: 22.05 2007.

Smt. Ram Dulari.

… … … Petitioner.

Versus

Municipal Corporation, Shimla and others.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the petitioner:	**Mr. Atul Jhingan, Advocate.**
For Respondent No.1:	**Mr. Shrawan Dogra, Advocate.**
For Respondent No.2:	**Mr. Anuj Gupta, Advocate.**
For Respondent No.3:	**Mr. Ajay Sharma, Advocate.**

Rajiv Sharma, Judge:

By way of this petition, the judgment of learned District Judge, Shimla, dated 15.7.2005 in civil miscellaneous appeal No.68-S/14 of 2003 has been assailed.

The brief facts necessary for adjudication of this petition are that the petitioner was served with a notice by respondent No.1

Whether reporters of local papers may be allowed to see the judgment? No.

bearing No. MCS/AP/3789/MU/2000-4966 dated 18.7.2001 stating therein that the petitioner had raised unauthorized construction. The petitioner had filed reply to the notice stating therein that she was the owner of the property in question since 1978 and she has not done any additions or alterations in the Dhara/structure since 1978. The Commissioner, Municipal Corporation, Shimla after taking due notice of the decree dated 21.6.1996 passed by the Sub Judge-II, Shimla restraining the Corporation from interfering in the possession of the petitioner over the Dhara in question and on the basis of spot inspection dated 28.10.2002 came to the conclusion that the area of Dhara had increased beyond the area mentioned in the decree in the following manner:-

"**4.00x1.30 = 5.20m2**
1/2x20x4 = .40m2 = 5.60m2"

On the basis of this finding, the Commissioner has found that the petitioner had unauthorizedly carried out the construction beyond the area mentioned in decree dated 21.6.1996. Consequently, the Commissioner had directed the demolition of unauthorized construction within a period of 10 days. This order was passed by the Commissioner on 18.10.2003.

Feeling aggrieved by this order, the petitioner had filed appeal bearing No.68-S/14 of 2003 in the Court of District Judge, Shimla on 30.10.2003. The learned District Judge, Shimla has rejected the appeal on 15.7.2005.

Mr. Atul Jhingan appearing on behalf of the petitioner had submitted that the order passed by the Commissioner, Municipal Corporation, Shimla dated 18.10.2003 and the judgment dated

15.7.2005 passed by the learned District Judge are not sustainable in the eyes of law. Mr. Shrawan Dogra appearing on behalf of respondent No.1 had supported the orders passed by the Commissioner, Municipal Corporation, Shimla as well as the appellate order dated 15.7.2005. Mr. Ajay Sharma appearing on behalf of proforma respondent has supported the submissions of Mr. Atul Jhingan.

I have heard the parties and perused the record.

It has come in the record that before the order dated 18th October, 2003 was passed by the Commissioner, Municipal Corporation, Shimla, the spot inspection was carried out by the Junior Engineer and on that basis the Commissioner, Municipal Corporation, Shimla had come to the conclusion that the petitioner had raised unauthorized construction by 5.60m2. The order dated 18th October, 2003 is a speaking order though not very lengthy. Similarly, the learned District Judge, Shimla has passed a reasoned judgment on the basis of the contentions raised by the parties. The learned District Judge has also taken note of the earlier decree passed by the learned Sub Judge-II dated 21.6.1996 and thereafter came to the conclusion that the area of unauthorized construction had increased to the extent of 5.60 square meters.

Mr. Atul Jhingan has submitted that in view of the decree dated 21.6.1996 passed by the learned Sub Judge (II), Shimla, the Commissioner, Municipal Corporation could not issue notice to the petitioner. The decree of learned Sub Judge (II), Shimla, dated

21st June, 1996 was to the effect that the plaintiff i.e. petitioner herein will not be evicted without following the due process of law. The petitioner was issued notice as per the provisions of the H.P. Municipal Corporation Act, 1994 for raising the construction beyond the area mentioned in the decree. Thus, issuance of the notice to the petitioner cannot be faulted with and consequently, the order passed by the Commissioner, Municipal Corporation on 18th October, 2003 is in accordance with law.

The finding recorded by the learned District Judge while affirming the order of the Commissioner, dated 18.10.2003 needs no interference. There is neither any jurisdictional error nor any procedural irregularity in the judgment dated 15.7.2005.

The up-shot of the above discussion is that there is no merit in this petition and the same is dismissed and the interim order dated 20.3.2006 stands vacated. There shall be no order as to costs.

(Rajiv Sharma)
Judge

May 22, 2007
(sck).